

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/615,527	GRAUMANN ET AL.	
	Examiner James Kish	Art Unit 3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to 8/6/07.
2.  The allowed claim(s) is/are 1-17.
3.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some\*    c)  None    of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of
 Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

- |  |  |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application                      |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____.   | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|  | 9. <input type="checkbox"/> Other _____.   |

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Steven Noll on September 25, 2007.

The application has been amended as follows:

Claim 1, starting at line 22

    said data processor being connected to said navigation system and  
    being supplied with said medical instrument position data  
    and determining, and solely from said medical instrument  
    position data, a...

### ***Allowable Subject Matter***

The following is an examiner's statement of reasons for allowance:

Applicant provides arguments and amendments to independent claims 1 and 8 to further clarify the claimed invention. In Applicant's arguments it is stated that in the present invention "the bone fragment actually moves within the image of the body region. This is made clear in the claimed subject matter because the image of the body

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region is always referred to, after the first mention thereof, as ‘said image of the body region,’ thereby making clear that one and only one image of the body region is generated, and the segmented visualization of the bone fragment is then repositioned within that image of the body region.” Based on this amendment and argument, the Examiner discovered Simon et al. (US Patent No. 6,470,207) in which a single image is taken at the beginning of a procedure in which bone fragments are repositioned within a patient (see column 13, line 5 through column 14, line 3). However, the bone fragments in this example are tracked via references marker fixedly attached to the fragment. A further limitation of the current claimed invention is a “data processor being connected to said navigation system and being supplied with said medical instrument position data and determining, and solely from said medical instrument position data , a modified position of the bone fragment relative to the body of the subject...” Furthermore, the medical instrument is “configured for introduction into the body of the subject and configured to interact with said bone fragment in the body of the subject to move said bone fragment.” Therefore, a reference frame cannot be interpreted as the medical instrument by which position data is gathered. The Examiner then considered Kienzle, III et al. (US Patent No. 6,285,902) as teaching “the intended point of surgery may be specified by other means including... the position of the tip of the surgical tool (see column 20, lines 1-4).” However, the point of surgery is merely an abstract point on the image, or “on the system monitor screen.” Line 7 of column 20 then states, “The position of the intended point of surgery is calculated relative to the bone tracking

clamp's coordinate frame..." Therefore, calculating the actual coordinate of the point of surgery still relies upon a tracking element fixedly attached to the bone being tracked.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Kish whose telephone number is 571-272-5554. The examiner can normally be reached on 8:30 - 5:00 ~ Mon. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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